

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease W-89986.

Affirmed.

1. Contracts: Formation and Validity: Bid Award--Oil and Gas Leases: Competitive Leases

The Bureau of Land Management may reject a bid in a competitive lease sale where the bid does not conform to the conditions set out in the lease sale notice. Where a minimum bid of \$5 per acre was established by the advertised terms of sale, a bid for \$1.39 was properly rejected.

APPEARANCES: John R. BEHRMANN, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

John R. BEHRMANN appeals from the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 31, 1984, rejecting his high bid of \$1.39 for parcel 115 in the October 15, 1984, competitive oil and gas lease sale. Parcel 115 contains 360 acres in Sweetwater County, Wyoming, described as the NE 1/4, E 1/2 NW 1/4, NE 1/4 SW 1/4, N 1/2 SE 1/4 of sec. 32, T. 19 N., R. 106 W., sixth principal meridian. Behrmann's bid of \$1.39 per acre was the only bid received for the parcel. The BLM decision establishes that BEHRMANN was the high bidder for parcel 115 in the October 15, 1984, competitive oil and gas lease sale. However the decision goes on to state: "In the sale notice * * * the notice was given that there is a \$5.00 per acre minimum bid. Since your bid was \$1.39 per acre, it is hereby rejected."

In support of his argument that his \$1.39 bid was a reasonable price for the lands in parcel 115, appellant has submitted a geological report and

economic evaluation. The report provides an analysis of the success and failure of drilling efforts in the area of parcel 115 and concludes:

This lease has a deep dry hole on it (#1 Sue Federal). It has never produced natural gas or oil according to State records, and the lease subsequently expired due to this nonproduction. The gas that was seen in the completion attempt was just a fair show of gas and should or would not be considered commercial at that depth (14653-14704').

Another dry hole to the north (#1 Poitevant Federal well) has a good show of oil but never was a producing oil well.

In light of the above information, the lease in question is not worth the \$5 minimum bid required by the BLM for KGS parcels, and the lease should never have been placed on the KGS availability list. It should have been placed on the SIMO availability list.

The notice for the October 15, 1984, competitive lease sale specified: "There will be an administrative minimum bid of \$5 per acre on this competitive sale; however, no bid will be accepted for less than fair market value of the offered minerals in the lands."

[1] The terms and conditions of oil and gas lease W-89986 were set forth in the notice of lease sale. A party submitting a bid agrees to be bound by the terms and conditions set forth in the notice of sale. See Coastal States Energy Co., 80 IBLA 274 (1984), citing Erie Coal & Coke Corp. v. United States, 266 U.S. 518 (1925), a case involving a contract bid dispute where the high Court observed, concerning sale bids rejected by the United States, "The terms and conditions of the sale as set forth in the advertisement were binding alike upon the United States and the bidders." Id. at 520. Although Coastal States Energy Co. was a case involving a production royalty rate established as a condition to sale of a coal lease, the principle applied there is equally applicable here: an attempt to later modify the advertised terms of a lease proposal by the Department cannot be permitted because to do so would not be fair to the other bidders. As the Board explained in Coastal States Energy Co., "[B]y participating in the lease sale, appellant accepted the terms and conditions of the proposal lease * * *." Id. at 280.

Had appellant wished to do so, he could have challenged the reasonableness of the sale conditions by protesting the validity of the terms prior to sale. Such a direct challenge to the sale could have avoided the predicament posed here, where, were his appeal to succeed, appellant would have obtained more favorable bid terms than any other potentially interested bidder. By electing to bid at the sale, appellant accepted the terms of the advertisement and cannot now complain that the terms were unreasonable. Cf. Coastal States Energy Co. for a discussion of protest procedures available prior to bidding where a challenge to the Government's advertisement of sale is desired to be made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

